

House Engrossed

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

CHAPTER 164

HOUSE BILL 2144

AN ACT

AMENDING SECTION 20-223, ARIZONA REVISED STATUTES; CHANGING THE DESIGNATION OF TITLE 20, CHAPTER 3, ARTICLE 8, ARIZONA REVISED STATUTES, TO "LIFE AND HEALTH ACTUARIAL OPINION AND MEMORANDUM REQUIREMENTS"; AMENDING TITLE 20, CHAPTER 3, ARIZONA REVISED STATUTES, BY ADDING ARTICLES 9 AND 10; REPEALING LAWS 1991, CHAPTER 261, SECTION 35; RELATING TO INSURANCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 20-223, Arizona Revised Statutes, is amended to
3 read:

4 20-223. Annual statement; payment of fees; penalty for failure
5 to file or pay

6 A. Each authorized domestic insurer shall annually on or before March
7 31 and each other authorized insurer shall annually on or before March 1 file
8 with the director, or a repository designated by the director, a true
9 statement of its financial condition, transactions and affairs as of the
10 December 31 preceding. The statement shall be completed pursuant to the
11 instructions and accounting practices and procedures that are approved by the
12 national association of insurance commissioners. The statement shall be in
13 such general form and context as approved by the national association of
14 insurance commissioners for the kinds of insurance to be reported upon, and
15 as supplemented for additional information required by the director. The
16 ~~director shall adopt rules providing requirements for the filing of annual~~
17 ~~audited financial statements.~~ Coincident with the filing of its annual
18 statement, each such insurer shall pay such fees prescribed by section 20-167
19 for filing the annual statement and renewal of its certificate of authority.

20 B. The statement of an alien insurer shall relate only to its
21 transactions and affairs in the United States unless the director requires
22 otherwise. The statement shall be verified by the insurer's United States
23 manager or other officer duly authorized.

24 C. The director may refuse to renew, or may suspend or revoke, the
25 certificate of authority of any insurer failing to file its annual statement
26 or pay its fees when due or within any extension of time therefor which the
27 director, for good cause, may have granted.

28 D. Any insurer failing to file an annual statement or to pay its fees
29 pursuant to this section is subject to payment of a penalty fee not to exceed
30 twenty-five dollars for each day of delinquency.

31 Sec. 2. Heading change

32 The article heading of title 20, chapter 3, article 8, Arizona Revised
33 Statutes, is changed from "ACTUARIAL OPINION AND MEMORANDUM REQUIREMENTS" to
34 "LIFE AND HEALTH ACTUARIAL OPINION AND MEMORANDUM REQUIREMENTS".

35 Sec. 3. Title 20, chapter 3, Arizona Revised Statutes, is amended by
36 adding articles 9 and 10, to read:

37 ARTICLE 9. PROPERTY AND CASUALTY ACTUARIAL
38 OPINION REQUIREMENTS

39 20-697. Property and casualty actuarial opinions; limitation of
40 liability

41 A. EVERY PROPERTY AND CASUALTY INSURANCE COMPANY DOING BUSINESS IN
42 THIS STATE ANNUALLY SHALL FILE A STATEMENT OF ACTUARIAL OPINION THAT IS MADE
43 BY AN APPOINTED ACTUARY. THE STATEMENT OF ACTUARIAL OPINION SHALL BE FILED
44 WITH THE ANNUAL FINANCIAL STATEMENT REQUIRED BY SECTION 20-223 IN ACCORDANCE
45 WITH THE APPROPRIATE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS PROPERTY

1 AND CASUALTY ANNUAL STATEMENT INSTRUCTIONS. THE STATEMENT OF ACTUARIAL
2 OPINION IS A PUBLIC DOCUMENT.

3 B. EVERY PROPERTY AND CASUALTY INSURANCE COMPANY THAT IS DOMICILED IN
4 THIS STATE AND THAT IS REQUIRED TO SUBMIT A STATEMENT OF ACTUARIAL OPINION
5 ANNUALLY SHALL SUBMIT AN ACTUARIAL OPINION SUMMARY THAT IS WRITTEN BY THE
6 COMPANY'S APPOINTED ACTUARY. THIS ACTUARIAL OPINION SUMMARY SHALL BE FILED
7 IN ACCORDANCE WITH THE APPROPRIATE NATIONAL ASSOCIATION OF INSURANCE
8 COMMISSIONERS PROPERTY AND CASUALTY ANNUAL STATEMENT INSTRUCTIONS AND SHALL
9 BE CONSIDERED A DOCUMENT SUPPORTING THE ACTUARIAL OPINION REQUIRED BY
10 SUBSECTION A OF THIS SECTION. A COMPANY THAT IS LICENSED BUT NOT DOMICILED
11 IN THIS STATE SHALL PROVIDE THE ACTUARIAL OPINION SUMMARY ON THE DIRECTOR'S
12 REQUEST.

13 C. EVERY PROPERTY AND CASUALTY INSURANCE COMPANY THAT IS DOMICILED IN
14 THIS STATE AND THAT IS REQUIRED TO SUBMIT A STATEMENT OF ACTUARIAL OPINION
15 ANNUALLY SHALL REQUIRE ITS APPOINTED ACTUARY TO PREPARE AN ACTUARIAL REPORT
16 IN SUPPORT OF THE ACTUARIAL OPINION THAT IS IN COMPLIANCE WITH THE
17 REQUIREMENTS CONTAINED IN THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS
18 PROPERTY AND CASUALTY ANNUAL STATEMENT INSTRUCTIONS. IF THE INSURANCE
19 COMPANY FAILS TO PROVIDE A SUPPORTING ACTUARIAL REPORT OR WORK PAPERS AT THE
20 REQUEST OF THE DIRECTOR OR THE DIRECTOR DETERMINES THAT THE SUPPORTING
21 ACTUARIAL REPORT OR WORK PAPERS ARE OTHERWISE UNACCEPTABLE, THE DIRECTOR MAY
22 ENGAGE A QUALIFIED ACTUARY AT THE COMPANY'S EXPENSE TO REVIEW THE OPINION AND
23 THE BASIS FOR THE OPINION AND TO PREPARE THE SUPPORTING ACTUARIAL REPORT OR
24 WORK PAPERS.

25 D. THE APPOINTED ACTUARY IS NOT LIABLE FOR DAMAGES TO ANY PERSON OTHER
26 THAN THE INSURANCE COMPANY AND THE DIRECTOR FOR ANY ACT, ERROR, OMISSION,
27 DECISION OR CONDUCT WITH RESPECT TO THE ACTUARY'S OPINION, UNLESS THE ACTUARY
28 ENGAGED IN FRAUD OR WILFUL MISCONDUCT.

29 20-697.01. Confidentiality; sharing of information

30 A. DOCUMENTS, MATERIALS OR OTHER INFORMATION IN THE POSSESSION OR
31 CONTROL OF THE DEPARTMENT THAT ARE CONSIDERED AN ACTUARIAL REPORT, WORK
32 PAPERS OR ACTUARIAL OPINION SUMMARY PROVIDED IN SUPPORT OF THE OPINION AND
33 ANY OTHER MATERIAL PROVIDED BY THE COMPANY TO THE DIRECTOR IN CONNECTION WITH
34 THE ACTUARIAL REPORT, WORK PAPERS OR ACTUARIAL OPINION SUMMARY ARE
35 CONFIDENTIAL, SHALL NOT BE SUBJECT TO PUBLIC RECORDS REQUESTS, SHALL NOT BE
36 SUBJECT TO SUBPOENA AND SHALL NOT BE SUBJECT TO DISCOVERY OR ADMISSIBLE IN
37 EVIDENCE IN ANY PRIVATE CIVIL ACTION.

38 B. THIS SECTION AND SECTION 20-697 SHALL NOT BE CONSTRUED TO LIMIT THE
39 DIRECTOR'S AUTHORITY TO RELEASE THE DOCUMENTS TO THE ACTUARIAL BOARD FOR
40 COUNSELING AND DISCIPLINE SO LONG AS THE MATERIAL IS REQUIRED FOR THE PURPOSE
41 OF PROFESSIONAL DISCIPLINARY PROCEEDINGS AND THAT THE ACTUARIAL BOARD FOR
42 COUNSELING AND DISCIPLINE ESTABLISHES PROCEDURES SATISFACTORY TO THE DIRECTOR
43 FOR PRESERVING THE CONFIDENTIALITY OF THE DOCUMENTS, NOR SHALL THIS SECTION
44 BE CONSTRUED TO LIMIT THE DIRECTOR'S AUTHORITY TO USE THE DOCUMENTS,

1 MATERIALS OR OTHER INFORMATION IN FURTHERANCE OF ANY REGULATORY OR LEGAL
2 ACTION BROUGHT AS PART OF THE DIRECTOR'S OFFICIAL DUTIES.

3 C. NEITHER THE DIRECTOR NOR ANY PERSON WHO RECEIVES DOCUMENTS,
4 MATERIALS OR OTHER INFORMATION WHILE ACTING UNDER THE AUTHORITY OF THE
5 DIRECTOR SHALL BE PERMITTED OR REQUIRED TO TESTIFY IN ANY PRIVATE CIVIL
6 ACTION CONCERNING ANY CONFIDENTIAL DOCUMENTS, MATERIALS OR INFORMATION
7 SUBJECT TO SUBSECTION A OF THIS SECTION.

8 D. THE DIRECTOR MAY:

9 1. SHARE DOCUMENTS, MATERIALS OR OTHER INFORMATION, INCLUDING THE
10 CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS OR INFORMATION SUBJECT TO
11 SUBSECTION A OF THIS SECTION WITH OTHER STATE, FEDERAL AND INTERNATIONAL
12 REGULATORY AGENCIES, WITH THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS
13 AND ITS AFFILIATES AND SUBSIDIARIES AND WITH STATE, FEDERAL AND INTERNATIONAL
14 LAW ENFORCEMENT AUTHORITIES, PROVIDED THAT THE RECIPIENT AGREES TO MAINTAIN
15 THE CONFIDENTIALITY AND PRIVILEGED STATUS OF THE DOCUMENT, MATERIAL OR OTHER
16 INFORMATION AND HAS THE LEGAL AUTHORITY TO MAINTAIN CONFIDENTIALITY.

17 2. RECEIVE DOCUMENTS, MATERIALS OR INFORMATION, INCLUDING OTHERWISE
18 CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS OR INFORMATION, FROM THE
19 NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AND ITS AFFILIATES AND
20 SUBSIDIARIES, AND FROM REGULATORY AND LAW ENFORCEMENT OFFICIALS OF OTHER
21 FOREIGN OR DOMESTIC JURISDICTIONS, AND SHALL MAINTAIN AS CONFIDENTIAL OR
22 PRIVILEGED ANY DOCUMENT, MATERIAL OR INFORMATION RECEIVED WITH NOTICE OR THE
23 UNDERSTANDING THAT IT IS CONFIDENTIAL OR PRIVILEGED UNDER THE LAWS OF THE
24 JURISDICTION THAT IS THE SOURCE OF THE DOCUMENT, MATERIAL OR INFORMATION.

25 3. ENTER INTO AGREEMENTS GOVERNING THE SHARING AND USE OF INFORMATION
26 CONSISTENT WITH SUBSECTIONS A THROUGH D OF THIS SECTION.

27 E. NO WAIVER OF ANY APPLICABLE PRIVILEGE OR CLAIM OF CONFIDENTIALITY
28 IN THE DOCUMENTS, MATERIALS OR INFORMATION SHALL OCCUR AS A RESULT OF
29 DISCLOSURE TO THE DIRECTOR UNDER THIS SECTION OR AS A RESULT OF SHARING AS
30 AUTHORIZED IN SUBSECTION D OF THIS SECTION.

31 ARTICLE 10. AUDITED FINANCIAL REPORTS

32 20-698. Annual audited financial reports

33 A. FOR THE YEAR ENDING DECEMBER 31, 2010 AND FOR EACH YEAR THEREAFTER,
34 EVERY INSURER HAVING DIRECT PREMIUMS WRITTEN IN THIS STATE OF ONE MILLION
35 DOLLARS OR MORE IN ANY CALENDAR YEAR AND MORE THAN ONE THOUSAND POLICYHOLDERS
36 OR CERTIFICATE HOLDERS OF DIRECT WRITTEN POLICIES NATIONWIDE AT THE END OF
37 THE CALENDAR YEAR IS SUBJECT TO THE REQUIREMENTS OF THE NATIONAL ASSOCIATION
38 OF INSURANCE COMMISSIONERS ANNUAL FINANCIAL REPORTING MODEL REGULATION FOR
39 THAT CALENDAR YEAR. EVERY INSURER HAVING DIRECT PREMIUMS WRITTEN IN THIS
40 STATE OF LESS THAN ONE MILLION DOLLARS IN ANY CALENDAR YEAR AND LESS THAN ONE
41 THOUSAND POLICYHOLDERS OR CERTIFICATE HOLDERS OF DIRECT WRITTEN POLICIES
42 NATIONWIDE AT THE END OF THE CALENDAR YEAR IS EXEMPT FROM THE REQUIREMENTS OF
43 THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS ANNUAL FINANCIAL
44 REPORTING MODEL REGULATION FOR THAT CALENDAR YEAR, UNLESS THE DIRECTOR MAKES
45 A SPECIFIC FINDING THAT COMPLIANCE IS NECESSARY FOR THE DIRECTOR TO CARRY OUT

1 STATUTORY RESPONSIBILITIES. INSURERS THAT ASSUMED PREMIUMS PURSUANT TO
2 CONTRACTS OR TREATIES OF REINSURANCE OF ONE MILLION DOLLARS OR MORE ARE NOT
3 EXEMPT.

4 B. THE DIRECTOR MAY DETERMINE WHETHER, CONSISTENT WITH THE
5 REQUIREMENTS OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS ANNUAL
6 FINANCIAL REPORTING MODEL REGULATION:

7 1. A FOREIGN OR ALIEN INSURER MAY BE EXEMPT FROM THIS ARTICLE IF THE
8 DIRECTOR FINDS ITS DOMICILIARY JURISDICTION HAS A SUBSTANTIALLY SIMILAR LAW
9 IN EFFECT AND THE INSURER HAS FILED ITS AUDITED FINANCIAL REPORT AND OTHER
10 REQUIRED COMMUNICATIONS WITH THE DIRECTOR AS OTHERWISE REQUIRED BY THIS
11 ARTICLE.

12 2. AN INSURER IS REQUIRED TO FILE AN AUDITED FINANCIAL REPORT EARLIER
13 THAN JUNE 1, WITH NINETY DAYS ADVANCED NOTICE TO THE INSURER.

14 3. AN EXTENSION OF THE JUNE 1 FILING DATE WILL BE GRANTED FOR
15 THIRTY-DAY PERIODS.

16 4. AN EXCEPTION WILL BE GRANTED TO THE ROTATION REQUIREMENT FOR A LEAD
17 AUDIT PARTNER FOR AN INSURER.

18 5. AN INDIVIDUAL MEETS THE QUALIFICATIONS AS AN INDEPENDENT CERTIFIED
19 PUBLIC ACCOUNTANT FOR THE PURPOSES OF THIS ARTICLE.

20 6. A FINANCIAL OR ORGANIZATIONAL HARDSHIP EXEMPTION WILL BE GRANTED TO
21 ALLOW A QUALIFIED INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT TO PERFORM NONAUDIT
22 SERVICES FOR AN INSURER HAVING DIRECT WRITTEN AND ASSUMED PREMIUMS OF LESS
23 THAN ONE HUNDRED MILLION DOLLARS IN ANY CALENDAR YEAR.

24 7. AN INSURER MAY FILE CONSOLIDATED OR COMBINED AUDITED FINANCIAL
25 STATEMENTS IN LIEU OF A SEPARATE ANNUAL AUDITED FINANCIAL STATEMENT IF THE
26 INSURER IS PART OF A GROUP OF INSURANCE COMPANIES THAT USES A POOLING OR ONE
27 HUNDRED PER CENT REINSURANCE AGREEMENT THAT AFFECTS THE SOLVENCY AND
28 INTEGRITY OF THE INSURER'S RESERVES AND THE INSURER CEDES ALL OF ITS DIRECT
29 AND ASSUMED BUSINESS TO THE POOL.

30 8. AN INSURER WILL BE GRANTED A HARDSHIP WAIVER OF THE AUDIT COMMITTEE
31 REQUIREMENTS REGARDING INDEPENDENT AUDIT COMMITTEE MEMBERS.

32 9. AN INSURER WILL BE GRANTED A FINANCIAL OR ORGANIZATIONAL HARDSHIP
33 EXEMPTION FROM COMPLIANCE WITH ANY OR ALL OF THE ANNUAL FINANCIAL REPORTING
34 REQUIREMENTS.

35 20-698.01. Rule making; exemption from rule making procedures

36 A. THE DIRECTOR MAY ADOPT RULES TO IMPLEMENT THIS ARTICLE.

37 B. THE DEPARTMENT IS EXEMPT FROM TITLE 41, CHAPTER 6 FOR THE PURPOSES
38 OF ADOPTING RULES RELATING TO REQUIREMENTS OF THE NATIONAL ASSOCIATION OF
39 INSURANCE COMMISSIONERS ANNUAL FINANCIAL REPORTING MODEL REGULATION AND THE
40 DIRECTOR'S AUTHORITY TO GRANT EXTENSIONS, EXEMPTIONS AND WAIVERS CONSISTENT
41 WITH THOSE PROVISIONS AND PRESCRIBED IN SECTION 20-698.

42 Sec. 4. Repeal

43 Laws 1991, chapter 261, section 35 is repealed.

APPROVED BY THE GOVERNOR JULY 13, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 13, 2009.